

August 30, 2002

The Honorable Gary Locke
Governor of Washington
P.O. Box 40002
Olympia, WA 98504-0002

The Honorable Doug Sutherland
Commissioner of Public Lands
P.O. Box 47001
Olympia, WA 98504-7001

Subject: Family Forest Road Maintenance and Abandonment Plans

Dear Governor Locke and Commissioner Sutherland:

Forests & Fish Policy has completed the tasks set out for us in your May 9, 2002 letter. We have worked collaboratively with family forest landowners to isolate specific road maintenance and abandonment plan (RMAP) requirements that may cause hardship, and explored solutions that alleviate the hardship caused by the new planning requirements while maintaining protection for aquatic resources. We are recommending the best means to address problems identified, which include some significant changes to RMAP requirements for family forest landowners while still protecting public resources and allowing us to move forward in the process of obtaining federal assurances.

To fulfill our charge, Forests & Fish Policy convened a family forest RMAP working group comprised of representatives of the following organizations: NOAA Fisheries (formerly National Marine Fisheries Service); Northwest Indian Fisheries Commission (NWIFC); U.S. Fish and Wildlife Service; Washington Farm Forestry Association; Washington Forest Protection Association; the Washington Departments of Ecology, Fish and Wildlife (DFW), and Natural Resources (DNR); and DNR's Small Forest Landowner Office Advisory Committee. As you know, NWIFC represents 19 tribes and an attendant diversity of perspectives on forest resources management. For this reason, NWIFC's participation in the working group was advisory in nature. With this exception, the recommendations we are offering represent consensus among all of the organizations represented in the working group.

Our recommendations hinge upon two critical considerations. First, all forest landowners must continue to comply with the other, non-RMAP road construction and maintenance rules in Chapter 222-24 WAC, as well as requirements of the Hydraulics Act. These requirements guard against potential or actual damage to public resources. DNR and DFW must continue to properly enforce these rules as a foundation to the additional protection afforded by RMAPs. Second, Forests & Fish compliance monitoring must soon begin. Compliance monitoring has not yet started due to a lack of funding. Compliance monitoring is needed to determine whether and how RMAP requirements and the road construction and maintenance rules are actually being

implemented, as well as many other elements of the Forestry Module of the Salmon Recovery Act (ESHB 2091). To summarize, our confidence to recommend substantial changes to family forest RMAP requirements depends to a great degree on compliance with the forest practices rules and the Hydraulics Act, supported by proper enforcement and critical knowledge provided by timely compliance monitoring.

Table 1 (enclosed) summarizes concerns about family forest RMAPs we have heard during the past two months. We do not endorse all of these concerns; these are what we have heard. Our recommendations address 29 of these 35 concerns: six concerns represent issues that are broader than Forests & Fish. We are offering four types of recommendations: changes to RMAP requirements, changes to certain forest practices definitions, action by state agencies using existing authorities, and needed funding.

I. Changes to RMAP Requirements

Although all forest landowners must comply with the road construction and maintenance rules, we recommend that RMAP planning and reporting requirements be differentiated for three categories of forestland owners (Table 2, enclosed).

Very Small Landowners.--This category is comprised of forestland parcels less than or equal to 20 acres in size, owned by those who own less than or equal to 80 total acres of forestland statewide. We recommend that these lands be exempt from all RMAP requirements except to address fish passage in the manner described below. No RMAP would be required.

Family Forest Landowners.--This category is comprised of those who meet the definition of "small forest landowner" in RCW 76.13.120 (2) (c). We recommend that these owners receive an educational brochure on proper road maintenance, and that their RMAP consists of a checklist that confirms they have read this guidance and are applying it to the management of their roads. We recommend that family forest landowners be required to submit their checklist-RMAP at the time they submit a forest practices application/notification (FPA), although they would be encouraged to voluntarily submit their checklist-RMAPs sooner if possible. We recommend that the extent of checklist-RMAP submission and rates of compliance with the road rules be evaluated at five-year intervals to measure success of this approach and make adjustments as necessary to ensure that the goals of the Forests & Fish Report are being achieved. Our expectation is that all or the vast majority of family forest landowners will have completed checklist-RMAPs within 15 years, and that their roads will be adequately maintained and/or repaired within that timeframe. Attaining this objective will be facilitated by other actions listed below. We recommend that the checklist-RMAP accompanying a family forest landowner's FPA should cover the entire contiguous land parcel of which the FPA is part. We recommend

that family forest landowners address fish passage in the manner described below. We recommend that family forest landowners be exempt from RMAP annual reporting and review requirements.

Large Forest Landowners.--This category is comprised of those who have harvested an average of 2 million board feet of timber, or more, from their lands during the past three years. We recommend no changes for large forest landowner RMAPs: large forest landowners will continue to meet RMAP requirements as currently in rule.

Fish Passage (Very Small Landowners and Family Forest Landowners).--We recommend that very small landowners and family forest landowners replace fish blockage culverts according to priorities determined at the watershed level, and that a new state program be created to conduct the watershed assessments and provide financial assistance for culvert replacement. We recommend that this program be established in statute. This program should be evaluated at five-year intervals to measure success and make program adjustments as necessary; these evaluations should be closely linked to compliance monitoring. We envision that funding for this program would be a combination of state and federal funds.

Fish blockage replacement priorities would be established through watershed inventories and assessment, based on a principle of "worst first" (i.e., culverts blocking the most fish habitat or causing actual damages to public resources would be replaced first). The first step in this process should be a thorough, well-coordinated effort to gather and synthesize all existing information about the locations and impacts of fish blockages. Maximum use should be made of this existing information, such as information that has been developed by the Washington State Conservation Commission and salmon recovery lead entities, before new field work is undertaken.

Information on potential sources of significant sediment delivery should be opportunistically collected during field inventories. Where sediment delivery problems are noted, landowners should be notified that those problems need to be addressed.

Landowners who commit to replace fish blockage culverts in priority order, using this new program, would be free to carry out lawful forest practices activities while waiting for their priorities to rise to the top of the list. We recommend that DNR be responsible for administrative aspects of this program; WDFW be lead in providing technical and scientific support on fixing fish barriers; and both agencies cooperate on watershed inventories, funding, and compliance.

II. Changes to Definitions

We recommend that the terms, "capable of supporting," "being actively used," and "incompatible" in the definition of "forest land" be clarified in rule. Many people are concerned that the definition could be broadly interpreted to require RMAPs for several types of non-forestland where forest trees could potentially grow but currently do not (e.g., pastures, orchards, crop fields). Similarly, we recommend that the term, "driveway" be removed from the definition of "forest road." Many people are concerned that RMAPs will be required for residential driveways not used for forest practices.

We recommend that the term, "road maintenance and abandonment plans" be deleted from the definition of "continuing forest land obligations" in RCW 76.09.390 and WAC 222-20-055. We feel that the existing, comprehensive body of real estate law ensures the careful transfer of RMAP obligations and agreements for replacement of culverts for fish passage from one landowner to the next.

III. Agency Action

We recommend that DFW and DNR continue to address concerns from some landowners about the educational and technical aspects of fish passage (see Table 1, Part 2). These problems can be addressed without any changes to laws or rules.

We recommend that DNR and DFW work with Washington State University Cooperative Extension to develop and schedule a series of educational workshops on the rules associated with road construction and maintenance that are consistent with the educational brochure distributed to family forest landowners.

We recommend that the Forest Practices Board (FPB) incorporate rule-making related to very small landowner and family forest landowner RMAPs into its 2003 workplan. Rule changes will be needed whether changes to the RMAP requirements are initiated in law or directly in rule. Additionally, we recommend that the FPB modifies WAC 222-24-052 (1) (Road maintenance) to make it clear that existing forest roads, including active and inactive roads, must be maintained only to the extent necessary to prevent potential or actual damage to public resources.

IV. Funding

To successfully implement our recommendations, funding is needed for several, linked key activities as a package:

1. Funding is needed for Forests & Fish compliance monitoring; approximately \$350,000 per year will be needed on an ongoing basis--this amount will fund all Forests & Fish compliance monitoring, not just RMAP monitoring. DNR is submitting a \$1.7 million, 03-05 Biennium decision package that includes this request.
2. Cost-share funding is needed to help replace fish blockage culverts on very small landowners' and family forest landowners' lands; we estimate that an average of \$10 million per year will be needed for the next 15 years. DNR is submitting a capital budget request for \$4 million for the 03-05 Biennium: a core of state funds is essential to begin the most urgent repairs--while we are working to obtain federal funding--and to acquire a much larger amount of federal funding (such as Environmental Quality Improvements Program (EQIP) funds administered by the USDA Natural Resource Conservation Service) through state-federal matching programs. State and federal shares should be as high as possible to ensure success of the program; landowners would need to pay any remaining costs not covered by the state and federal cost shares.
3. Funding is needed to design and carry out watershed assessments to identify and prioritize fish blockages. DNR and DFW are submitting interlocking 03-05 Biennium decision packages, totaling \$2.2 million, to begin this process. Maximum possible use will be made of existing information, so that no funds are wasted by duplicating work that already has been done. This program will be coordinated to the maximum extent possible with existing watershed assessment activities that may be undertaken by conservation districts, watershed councils, the Department of Transportation (DOT), and others.
4. Funding is needed to maintain and update critical Forests & Fish information systems and complete the spatial component of DNR's Small Forest Landowner Office (SFLO) database. Accurate data on water types, stream locations, and forest roads are needed by both landowners and agencies; the Forest Practice water typing system, hydrography data, and forest roads data must be kept up to date. Accurate, computer-based maps of family forest lands will provide a framework for quickly assessing problems at a watershed level, thereby focusing and reducing the cost of watershed inventories and assessments. These data are also needed by the SFLO to fulfill its reporting obligations to the Legislature, and will support the state's efforts to obtain Forests & Fish federal assurances. DNR is submitting two 03-05 Biennium decision packages, totaling \$2.0 million, to maintain and update the Forests & Fish information systems and complete the spatial component of the SFLO database. Funds will be needed in future biennia for maintenance and updating.
5. Funding is needed for two new positions within the SFLO: a roads engineer to provide road maintenance support for family forest owners and very small landowners, and a federal funding coordinator to acquire federal funds and create an interface for making federal funds available to

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small landowners. Family forest owners cannot be left to navigate federal granting processes on their own. Approximately \$115,000 per year will be needed to support these positions on an ongoing basis.

Forests & Fish Policy's RMAP working group is continuing work that anticipates implementation of our recommendations. We have begun to design the watershed inventory and prioritization process, and are preparing to work closely with the Washington Conservation Commission, the conservation districts, and other state, regional, and local organizations involved with salmon and habitat conservation. We are actively pursuing several sources of funds that can be used to help replace fish blockage culverts. These include EQIP funds, federal funds administered by the Salmon Recovery Funding Board, and funds related to off-site mitigation of DOT construction projects. We appreciate the opportunity you have given us to help address the disparate economic effects experienced by family forest landowners while maintaining protection for Washington's aquatic resources. We believe the recommendations we are providing move us significantly in that direction.

Sincerely,

Pat McElroy
Co-Chair, Forests & Fish Policy

Bill Wilkerson
Co-Chair, Forests & Fish Policy

Enclosures

c: Senator James Hargrove
Senator Ken Jacobsen
Senator Bob Morton
Representative Mark Doumit
Representative Cathy McMorris
Representative Ed Orcutt
Representative Phil Rockefeller
Representative Bob Sump
Bob Playfair, President, Washington Farm Forestry Association
Steve Appel, President, Washington State Farm Bureau
Forest Practices Board
Forests & Fish Policy
Small Forest Landowner Office Advisory Committee

Table 1. Family forest road maintenance and abandonment plan (RMAP) concerns expressed by some landowners and organizations.

Part 1. Issues addressed by Forests & Fish Policy's recommendations for changes to laws and/or rules
1.1 RMAP requirements place a disproportionately heavy financial burden on family forest landowners: planning costs culvert installation and replacement costs road maintenance costs
1.2 The 500 acre definition of family forest landowner is not descriptive: some family forest landowners own more than 500 acres; all family forest landowners should be regulated the same way; all family forest landowners exert similar, lower impacts on the environment
1.3 Family forest landowners don't understand RMAP requirements
1.4 Family forest landowners fear RMAP requirements
1.5 RMAP forms are too long and complex for family forest landowners
1.6 RMAP requirements never were intended to apply to 20-acre exempt landowners
1.7 RMAP requirements are a "one size fits all" program
1.8 RMAP requirements apply industrial logging standards to family forest landowners' roads
1.9 RMAP standards for family forest landowners are too high, requiring/resulting in over-engineering
1.10 Definition of "forest road" makes it appear that RMAP requirements encompass non-forest roads
1.11 Definition of "forest land" makes it appear that RMAP requirements encompass non-forest land
1.12 RMAPs are required even where there is no problem
1.13 There is no prioritization of culvert replacements
1.14 Culvert replacements are required even though there are downstream blockages
1.15 It is pointless to require family forest landowners to submit RMAPs unless timber harvest is imminent
1.16 July 1, 2006 RMAP deadline is too soon
1.17 July 1, 2016 road maintenance deadline is too soon
1.18 Annual reporting and review requirement is not feasible for tens of thousands of family forest landowners
1.19 Power line maintenance crews and fire fighters will be unable to access areas they need because RMAP requirements will force family forest landowners to abandon roads, thereby increasing the risk and duration of outages, and jeopardizing homes and lives
1.20 RMAP requirements will force family forest landowners to cut down trees to pay for culvert replacement and road maintenance.
1.21 RMAP buyer/seller notification requirement encumbers property, decreases property value, impedes land transactions
1.22 Federal cost-share funding for fish blockage repairs may create a nexus that imposes additional, federal requirements upon family forest landowners

Table 1. (Continued)
Part 2. Issues addressed by Forests & Fish Policy's recommendations for agency action
2.1 Agency field staff are providing inconsistent guidance to family forest landowners
2.2 Clear, quick guidance on culvert size is lacking
2.3 Existing culvert size guidance is resulting in large, over-engineered culverts for low-gradient, wide, shallow streams
2.4 There is a lack of flexibility in culvert sizing; field-level decision making is constrained
2.5 Agency field staff may be directing unnecessary culvert replacements
Part 3. Issues that should be addressed through information and education
3.1 RMAPs is an unnecessary solution to a presumed problem: no scientific information exists that demonstrates roads on family forest landowners' lands are causing problems for fish or water quality
3.2 Adaptive management provisions of the Forests Practices Rules may require family forest landowners to perpetually replace culverts according to more and more stringent specifications
Part 4. Broader concerns
4.1 RMAP requirements are unconstitutional
4.2 RMAP requirements are illegal
4.3 RMAP requirements represent a property taking
4.4 Agency access to family forest landowners' lands (to inspect roads and comply RMAPs) is an infringement upon civil liberties
4.5 RMAPs become public records, accessible by those who want to make trouble for family forest landowners
4.6 Family forest landowners must bear the burden of maintaining roads and repairing fish blockages associated with easements that traverse their lands

Table 2. Forests & Fish Policy's recommendations for very small landowner, family forest landowner, and large forest landowner road maintenance and abandonment plan (RMAP) requirements.¹

Item	Very Small Landowner	Family Forest Landowner	Large Forest Landowner
definition	≤ 20 acre parcel, owns < 80 acres statewide	per RCW 76.13.120 (2) (c)	harvests > 2 million board feet per year (3 yr. average)
RMAP	not required, receives educational brochure	required, abbreviated content (educational brochure & checklist)	required, content as currently in rule
RMAP preparation schedule	n/a - no RMAP required	submit checklist-RMAP with Forest Practices Application	schedule as currently in rule
free technical assistance from Small Forest Landowner Office	eligible		ineligible
cost-share funding for RMAP preparation	n/a - no RMAP required	n/a - checklist-RMAP	may apply to existing programs if eligible
road maintenance schedule	n/a - no RMAP required	per checklist-RMAP	schedule as currently in rule
annual reviews and reporting	n/a - no RMAP required	not required	required as currently in rule
fish passage	repair fish blockages per priorities determined through watershed assessment; acquire cost-share funding for fish blockage repairs		repair fish blockages as currently in rule
schedule for repairing fish blockages	complete within 15 years per watershed priorities and availability of cost-share funding		schedule as currently in rule
cost-share funding to repair fish blockages	state-led effort to acquire and provide cost-share funding		may apply to existing programs if eligible
¹ These differences only pertain to RMAPs (WAC s 222-24-050, 222-24-051). All landowners must comply with the other road construction and maintenance rules in Chapter 222-24 WAC.			